

REMARKS

In the Office Action, the Examiner allowed claims 14-19 and 31, and rejected claims 1-8 and 36-43, and objected to claims 1-8. By this paper, Applicants hereby cancel claims 1-8, 36-40, 42, and 43, amend claim 41, and add new claims 44-72 to clarify certain features to expedite allowance of the present application. These amendments and new claims do not add any new matter. Specifically, the Applicants hereby add new dependent claims 44-48 that depend from independent claim 41, and new independent claims 49, 55, 61, 68, and 71 and associated dependent claims 50-54, 56-60, 62-67, 69-70, and 72, respectively. For example, the new independent claim 49 and the new dependent claims 67 and 69 are based on the allowable subject matter of claims 14-19 and 31. In view of the Examiner's reasons for allowance in the Final Office Action mailed on June 8, 2006, the Applicants stress that claims 49-55, 67, and 69 are currently in condition for allowance. *See* Final Office Action mailed on June 8, 2006, Paper No. 20060531, page 8. In view of the foregoing amendments and the following remarks, Applicants respectfully request reconsideration and allowance of all pending claims.

Claim Objections

In the Office Action, the Examiner objected to claims 1-8. Specifically, the Examiner stated in line 2, "the flow of cutting oxygen" should read "a flow of cutting oxygen". Although the Applicants do not necessarily agree with the Examiner's objection, the Applicants hereby cancel claims 1-8 making these claims objects moot. Therefore, the Applicants respectfully request withdrawal of these claim objections.

Rejections under 35 U.S.C. § 102

In the Office Action, claims 1-6, 8, 36, and 39, and 41-43 were rejected under 35 U.S.C. § 102(b) as anticipated by Clinton (U.S. Patent No. 2,666,479; hereinafter "Clinton") and claims 1-6, 8, and 36-40 were rejected under 35 U.S.C. 102(b) as being anticipated by Miller (U.S. Patent No. 2,709,446, hereinafter "Miller"). The Applicants respectfully traverse these rejections. However, as noted above, the Applicants hereby

cancel claims 1-8, 36-40, 42, and 43. As a result, only the rejection of claim 41 based on Clinton remains. The Applicants respectfully stress that Clinton does not anticipate claim 41 for the reasons set forth below.

Legal Precedent and Guidelines

First, the pending claims must be given an interpretation that is reasonable and consistent with the *specification*. See *In re Prater*, 415 F.2d 1393, 1404-05, 162 U.S.P.Q. 541, 550-51 (C.C.P.A. 1969) (emphasis added); see also *In re Morris*, 127 F.3d 1048, 1054-55, 44 U.S.P.Q.2d 1023, 1027-28 (Fed. Cir. 1997); see also M.P.E.P. §§ 608.01(o) and 2111. Indeed, the specification is “the primary basis for construing the claims.” See *Phillips v. AWH Corp.*, No. 03-1269, -1286, at 13-16 (Fed. Cir. July 12, 2005) (*en banc*). One should rely *heavily* on the written description for guidance as to the meaning of the claims. See *id.*

Second, interpretation of the claims must also be consistent with the interpretation that *one of ordinary skill in the art* would reach. See *In re Cortright*, 165 F.3d 1353, 1359, 49 U.S.P.Q.2d 1464, 1468 (Fed. Cir. 1999); M.P.E.P. § 2111. “The inquiry into how a person of ordinary skill in the art understands a claim term provides an objective baseline from which to begin claim interpretation.” See *Collegenet, Inc. v. ApplyYourself, Inc.*, No. 04-1202, -1222, 1251, at 8-9 (Fed. Cir. August 2, 2005) (quoting *Phillips*, No. 03-1269, -1286, at 16). The Federal Circuit has made clear that derivation of a claim term must be based on “usage in the ordinary and accustomed meaning of the words amongst artisans of ordinary skill in the relevant art.” See *id.*

Third, anticipation under section 102 can be found only if a single reference shows exactly what is claimed. *Titanium Metals Corp. v. Banner*, 778 F.2d 775, 227 U.S.P.Q. 773 (Fed. Cir. 1985). For a prior art reference to anticipate under section 102, every element of the claimed invention must be identically shown in a single reference. *In re Bond*, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990). To maintain a proper

rejection under section 102, a single reference must teach each and every limitation of the rejected claim. *Atlas Powder v. E.I. du Pont*, 750 F.2d 1569 (Fed. Cir. 1984). Accordingly, the Applicants need only point to a single element not found in the cited reference to demonstrate that the cited reference fails to anticipate the claimed subject matter. The prior art reference also must show the *identical* invention “*in as complete detail as contained in the ... claim*” to support a *prima facie* case of anticipation. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q. 2d 1913, 1920 (Fed. Cir. 1989).

Fourth, if the Examiner relies on a theory of inherency, the extrinsic evidence must make clear that the missing descriptive matter is *necessarily* present in the thing described in the reference, and that it would be so recognized by persons of ordinary skill. *In re Robertson*, 169 F.3d 743, 49 U.S.P.Q.2d 1949 (Fed. Cir. 1999) (Emphasis Added). The mere fact that a certain thing *may* result from a given set of circumstances is not sufficient. *Id.* In relying upon the theory of inherency, the Examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic *necessarily* flows from the teachings of the applied prior art. *Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Inter. 1990) (emphasis in original). The Examiner, in presenting the inherency argument, bears the evidentiary burden and must adequately satisfy this burden. *See id.* Regarding functional limitations, the Examiner must evaluate and consider the functional limitation, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used. *See* M.P.E.P. § 2173.05(g); *In re Swinehart*, 169 U.S.P.Q. 226, 229 (C.C.P.A. 1971); *In re Schreiber*, 44 U.S.P.Q.2d 1429, 1432 (Fed. Cir. 1997). If the Examiner believes the functional limitation to be inherent in the cited reference, then the Examiner “must provide some evidence or scientific reasoning to establish the reasonableness of the examiner’s belief that the functional limitation is an inherent characteristic of the prior art.” *Ex parte Skinner*, 2 U.S.P.Q.2d 1788, 1789 (Bd. Pat. App. & Inter. 1986).

Fifth, the *drawings* of the cited reference must be evaluated for what they *reasonably disclose and suggest* to one of ordinary skill in the art. *In re Aslanian*, 590 F.2d 911, 200 U.S.P.Q. 500 (CCPA 1979). Arguments based on dimensions of the drawing features are of little value where the reference does not disclose specific dimensions or any indication of whether the drawings are to scale. *See Hockerson-Halberstadt, Inc. v. Avia Group Int'l*, 222 F.3d 951, 956, 55 U.S.P.Q.2d 1487, 1491 (Fed. Cir. 2000).

Features of Independent Claim 41 Missing from Clinton

Clinton fails to anticipate independent claim 41 for a number of reasons. First, Clinton fails to teach or suggest, *inter alia*, “a valve passage extending crosswise completely through the body in a crosswise direction relative to a longitudinal axis of the torch.” In contrast, Clinton discloses a central bore 24 supporting cylindrical rod 23, both of which are oriented lengthwise (not crosswise) along the torch 10. Moreover, the central bore 24 and associated rod 23 do not extend completely through the torch 10, much less crosswise completely through as recited by claim 41. As shown in FIGS. 2-4, the central bore 24 and associated rod 23 are at a central position well within the interior of the torch 10. For at least this reason, Clinton cannot anticipate claim 41 and its dependent claims.

Second, Clinton fails to teach or suggest, *inter alia*, “a reversible valve member disposed in the valve passage and movable in the crosswise direction.” In contrast, the rod 23 only moves in a lengthwise (not crosswise) directly along the central bore 24. As discussed above, the central bore 24 is oriented along the central lengthwise axis of the torch 10, and the rod 23 can only move forward and backward along that lengthwise axis. For at least this reason, Clinton cannot anticipate claim 41 and its dependent claims.

Third, Clinton fails to teach or suggest, *inter alia*, “wherein the reversible valve member comprises first and second valve orientations that are reversible relative to

opposite ends of the valve passage on the opposite sides of the torch, respectively.” In contrast, Clinton discloses only one possible orientation of the cylindrical rod 23. Specifically, the cylindrical rod 23 has a tapered forward end 26, which engages a conical seat portion 24’ of the central bore 24 in only one orientation of the rod 23. *See* Clinton, Fig. 2; col. 3, lines 44-53. As a result, the cylindrical rod 23 cannot be reversed relative to opposite ends of the central bore 24. Moreover, in context of the crosswise language discussed above, the cylindrical rod 23 clearly cannot be reversed with respect to a crosswise direction. For at least this reason, Clinton cannot anticipate claim 41 and its dependent claims.

Fourth, Clinton fails to teach or suggest, *inter alia*, “a lever comprising first and second mounting orientations that are reversible relative to the opposite ends of the valve passage while the body remains in a fixed position relative to the combustion tip.” In contrast, Clinton discloses “handle casing 17, which is rotatable on the front and rear valve blocks when the supporting pins and valve-operating mechanism are removed, is then rotated so that slot 51 is located at the top of the torch.” Clinton, col. 4, lines 70-74 (emphasis added). Clearly, Clinton requires rotation of the body to make the lever 21 reversible. For at least this reason, Clinton cannot anticipate claim 41 and its dependent claims.

Fifth, Clinton fails to teach or suggest, *inter alia*, “wherein the first mounting orientation comprises the lever mutually exclusively secured to the first pivot joint without connection to the second pivot joint, and the second mounting orientation comprises the lever mutually exclusively secured to the second pivot joint without connection to the first pivot joint.” As illustrated in FIGS. 3 and 4, Clinton always requires use of the same two pins 33 and 34 and the same two openings 49 and 50. In one configuration, the pin 33 engages the opening 49 while the pin 34 engages the opening 50. *See* Clinton, col. 5, lines 1-5. In the opposite configuration, the pin 34 engages the opening 49 while the pin 33 engages the opening 50. *See id.* Thus, one configuration

does not use a pivot joint not used by another configuration, and vice versa. For at least this reason, Clinton cannot anticipate claim 41 and its dependent claims.

For at least these reasons, Applicants respectfully assert that Clinton does not anticipate independent claim 41 and its respective dependent claims. With the foregoing in mind, Applicants respectfully request reconsideration and allowance of claims 41 and 44-48.

Rejections under 35 U.S.C. § 103

In the Office Action, claim 7 was rejected under 35 U.S.C. § 103(a) as being unpatentable in view of Clinton and Dimock et al. (U.S. Patent No. 5,571,427; hereinafter "Dimock"), and as being obvious in view of Miller and Dimock. However, as noted above, the Applicants hereby cancel claims 1-8, 36-40, 42, and 43. As a result, the foregoing rejections are now moot and should be withdrawn.

New Claims

As noted above, the Applicants hereby add new claims 44-72. The Applicants respectfully stress that these claims are currently in condition for allowance.

Claims 44-48 depend from independent claim 41 and recite additional features missing from the cited references, taken alone or in hypothetical combination with one another. As discussed above, the Examiner rejected claim 41 only in view of Clinton, which fails to teach or suggest a variety of features recited by claim 41. In addition, Clinton fails to teach or suggest, *inter alia*, "the lever directly engages the reversible valve member," as recited by new claim 44. Instead, Clinton discloses various linkages between the lever 21 and the rod 23. For at least this reason, Clinton, taken alone or in hypothetical combination with Miller and/or Dimock, cannot render claim 44 unpatentable.

Clinton also fails to teach or suggest, *inter alia*, “the lever interfaces with the reversible valve member at a position outside of the body,” as recited by claim 45. In contrast, Clinton discloses that the lever 21 engages link 37 and arm 38, rather than the rod 23. Again, the rod 23 is completely inside of the body of the torch 10, such that nothing engages the rod 23 outside of the body. For at least this reason, Clinton, taken alone or in hypothetical combination with Miller and/or Dimock, cannot render claim 45 unpatentable.

With regard to claims 46 and 47, the Applicants respectfully stress that these claims are currently in condition for allowance in view of the allowable subject matter of claims 14-19 and 31.

Furthermore, the Applicants stress that the cited references, taken alone or in hypothetical combination, fail to teach or suggest features recited by new independent claim 49 and its dependent claims. Specifically, as discussed above, new independent claim 49 recites allowable subject matter based on the allowable claims 14-19 and 31 and based on the Examiner’s statement of reasons for allowance set forth in Paper No. 20060531, page 8.

The Applicants further stress that the cited references cannot support a *prima facie* case of anticipation or obviousness of new independent claim 55 and its dependent claims. For example, new independent claim 55 recites, *inter alia*, “a torch valve body comprising a valve passage extending completely through the torch valve body along a first axis crosswise to a second axis, wherein the second axis is oriented in a general direction of fluid flow through the torch valve body.” In addition, claim 55 recites, *inter alia*, “a valve movable along the first axis within the valve passage, wherein a portion of the valve that moves along the first axis protrudes from the torch valve body to an engagement position outside of the torch valve body, and the valve is selectively mountable in the valve passage in a first orientation and a second orientation inverted relative to the first orientation.” Furthermore, new claim 55 recites, *inter alia*, “a first

oxygen pathway controlled by the valve; a second oxygen pathway bypassing and not controlled by the valve; a fuel pathway bypassing and not controlled by the valve.” Finally, new claim 55 recites, *inter alia*, “a lever engaged with the portion of the valve at the engagement position, wherein the lever is selectively mountable to the torch valve body in a first lever orientation and a second lever orientation inverted relative to the first lever orientation.” The Applicants respectfully stress that independent claim 55 and its dependent claims are patentable over the cited references.

The Applicants further stress that the cited references cannot support a *prima facie* case of anticipation or obviousness of new independent claim 61 and its dependent claims. For example, new independent claim 61 recites, *inter alia*, “a torch, comprising: a body comprising a valve passage having an axis oriented crosswise relative to a longitudinal axis of the torch; and a valve disposed in the valve passage, wherein the valve has a range of movement along the axis in opposite directions oriented crosswise relative to the longitudinal axis of the torch, and the valve is selectively mountable in the valve passage in a first orientation and a second orientation inverted relative to the first orientation.” The Applicants respectfully stress that independent claim 61 and its dependent claims are patentable over the cited references.

The Applicants further stress that the cited references cannot support a *prima facie* case of anticipation or obviousness of new independent claim 68 and its dependent claims. For example, new independent claim 68 recites, *inter alia*, a torch having “a lever selectively mountable to the torch in a first lever orientation and a second lever orientation inverted relative to the first orientation, wherein the first lever orientation comprises the lever mutually exclusively secured to the first pivot joint without connection to the second pivot joint, and the second lever orientation comprises the lever mutually exclusively secured to the second pivot joint without connection to the first pivot joint.” The Applicants respectfully stress that independent claim 68 and its dependent claims are patentable over the cited references.

The Applicants further stress that the cited references cannot support a *prima facie* case of anticipation or obviousness of new independent claim 71 and its dependent claims. For example, new independent claim 71 recites, *inter alia*, “the torch splits flow of a fluid to partially bypass the valve and to be partially controlled by the valve.” The Applicants respectfully stress that independent claim 71 and its dependent claim are patentable over the cited references.

Conclusion

If the Examiner believes that a telephonic interview will help speed this application toward issuance, the Examiner is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

Date: May 7, 2007

/Tait R. Swanson/
Tait R. Swanson
Reg. No. 48,226
FLETCHER YODER
P.O. Box 692289
Houston, TX 77269-2289
(281) 970-4545